

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

## **1<sup>st</sup> Civil Appeal No.D- 14 of 2008**

**(Muhammad Waris through his Legal Heirs V. National Highway Authority & another)**

### **Hearing of Case**

- 1.For orders on CMA 398/2021.
- 2.For hearing of CMA 236/2008.
- 3.For hearing of Main Case

### **Before:**

**Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Zulfiqar Ali Sangi**

Date of Hearing: **16-03-2022**

Date of Decision: **16-03-2022**

**Mr. Abdul Salam Arain, Advocate for the Appellants.**

**Mr. Nishad Ali Shaikh, Associate of Mr. A.M Mobeen Khan, Advocate for the Respondents.**

## **ORDER**

**Muhammad Junaid Ghaffar, J.** –Through this 1<sup>st</sup> Civil Appeal, the Appellants have impugned Judgment dated 24.02.2008, passed by 2<sup>nd</sup> Additional District Judge, Ghotki, in Land Acquisition Application No. 02 of 2003 (**Muhammad Waris v. National Highway Authority of Pakistan and another**), whereby, claim of the Appellants has been disallowed regarding enhancement of compensation; additional payment of certain land and construction; however, benefit of Sections 28-A and 34 of the Land Acquisition Act, 1894 has been extended.

**2.** At the very outset, we may observe that though this 1<sup>st</sup> Civil Appeal was filed in 2008 and was even admitted for regular hearing; but never / ever any Court fee was deposited, either at the time of filing of the Appeal; or thereafter, until an objection was raised by us, when on 24.02.2022 the Court fee was deposited; however, same was taken on record subject to exception and the following order was passed:

“Appellants’ Counsel in 1<sup>st</sup> Civil Appeal No.D-14 of 2008 has filed statement alongwith requisite Court fee. It appears that since filing of this appeal, no Court fee has been deposited. While confronted, the Appellants’ counsel has relied upon judgment of the Hon’ble Supreme Court in the case of *Siddique Khan and 2 others v. Abdul Shakur Khan and another (PLD 1984 SC 289)*; however he is directed to go through the subsequent judgment of the Hon’ble Supreme Court in the case of *Assistant Commissioner and Land Acquisition Collector, Badin vs. Haji Abdul Shakoor and others (1997 SCMR 919)*, which is directly in relation to a land acquisition

appeal wherein it has been held that if Court fee is not deposited within time, the appeal would be time barred and liable to be dismissed.

Adjourned to **16.03.2022**; to be taken up at **11:00 a.m.** Office is directed to place a signed copy of this order in captioned connected matter.

**3.** Today, once again the Appellants' Counsel has relied upon case of *Siddique Khan and 2 others v. Abdul Shakur Khan and others* (**PLD 1984 SC 289**), however, the Hon'ble Supreme Court in the case of *Assistant Commissioner and Land Acquisition Collector Badin v. Haji Abdul Shakoor and others* (**1997 SCMR 919**)<sup>1</sup>, has also discussed the Judgment of *Siddique Khan (supra)* and came to the conclusion that insofar as the deficiency in Court fee while filing an Appeal is concerned, same has to be dealt with somewhat differently and the Appeal in that case was dismissed being time barred. In the present case, also the matter pertains to Appeal and the case is fully covered by the case of *Assistant Collector Land Acquisition Collector, Badin (supra)*, therefore, no exception can be drawn; hence the Appeal is liable to be dismissed as being time barred and it is so ordered.

**4.** Nonetheless, in the interest of justice and for reason that this Appeal was admitted to regular hearing and is pending since 2008, we have even examined the impugned Judgment as well as the record and are of the view that as to the enhancement of compensation and so also for destruction of any construction and claim in respect of acquisition of any additional land, the Appellant has miserably failed to prove such claim with any cogent and reliable evidence; whereas, reliance on any additional documents, if any, (such as minutes of some meeting) as argued by the Appellants Counsel is concerned; the same is neither admissible as such; nor in fact it was ever produced or relied upon by the Appellant in his

---

<sup>1</sup> 8. The question in the above Siddique Khan's case was the interpretation of the above provision and in that context, various observations have been made. There is no doubt that section 107, C.P.C. confers same powers on an Appellate Court which are enjoyed by the Court of original jurisdiction in respect of suits. In other words, if a trial Court rejects a plaint on the ground of failure to supply requisite court-fee without complying with the requirement of above clause (c) of Rule 11 of Order VII, C.P.C., an Appellate Court can call upon the plaintiff to supply the requisite stamp fee within the time to be fixed by it, but there is no such requirement under Order XLI or any other provision of the C.P.C. relating to filing of an appeal. If an appellant files an appeal with the deficit court-fee, the Appellate Court under section 149, C.P.C. can extend the time and if time is so extended, the question of limitation will not arise but if the Appellate Court finds that the appellant is guilty of contumacy or he acts in a positive mala fide manner in regard to deficient court-fee, it may decline to exercise discretion on that ground in favour of the appellant. The above legal position has not been changed by above Siddique Khan's case even in respect of the suits.

evidence<sup>2</sup>. This is besides the fact the Respondents had all along denied attending any such meeting and consenting to the rates being claimed by the Appellant. Per settled law the rates are to be determined on the basis of market value and not by consent in any meeting of the stakeholder. Moreover, the Appellant had also failed to prove that his land was not agricultural land as against his claim of it being commercial. Therefore, the Referee Court was fully justified in rejecting the claim of the Appellant. In fact, as per the record, compensation had already been paid on an enhanced value by the Collector as against the value determined by the concerned Mukhtiarkar in respect of the category of land owned by the Appellant, and therefore no exception can be drawn. The judgment of the Referee Court to this extent appears to be in accordance with law and evidence led on behalf of the Appellate. However, it may be observed that this finding of ours is only in respect of the claim of the Appellant as raised in this Appeal; and not as a whole in respect of the impugned judgment, as partly the said judgment in respect of grant of interest and additional compensation pursuant to Sections 28-A and 34 of the Land Acquisition Act, 1894, has also been impugned by Respondent No.1 herein, by way of a separate Appeal, which is also being decided today through a separate order.

**5.** In view of hereinabove facts and circumstances of this case, this 1<sup>st</sup> Civil Appeal does not merit any consideration and is accordingly **dismissed** as being time barred as well as on merits as above.

**J U D G E**

**J U D G E**

Ahmad

---

<sup>2</sup> "I have not produced report of Mukhtirarkar and Sub-Registrar regarding value"... "I have not produced any minutes of the meeting held between NHA officials, land acquisition officers and other Zamindars"... "I have not produced documentary evidence regarding value of the land in shape of sale deeds etc".